

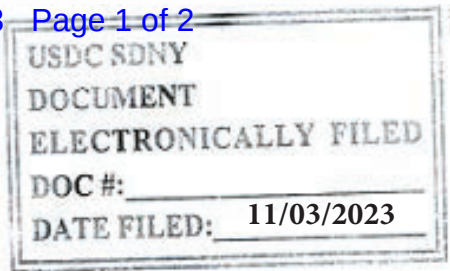
MEMO ENDORSED

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November 3, 2023

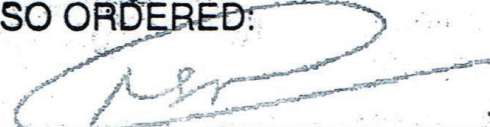
Honorable Nelson Roman
United States District Judge
United States District Courthouse
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Deft's request to file, on or before Nov. 13, 2023, a supplemental response to the Govt's motions in limine is **GRANTED**. Clerk of Court is requested to terminate the motion at ECF No. 58.

Dated: White Plains, NY

November 3, 2023

SO ORDERED:


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

BY ECF and EMAIL/PDF

Re: *USA v. Rosita Rossy*, 22 Cr. 550 (NSR) -02
Leave to File Supplemental Defense Response
to the Government's Motions in Limine

Dear Judge Roman:

In the Government's Motions in Limine (ECF Doc No. 53), they requested, in part, to preclude the defendant from offering evidence concerning "the unsubstantiated bad acts" of Government witness CO-1, involving misconduct with an inmate, claiming, among other reasons, that law enforcement investigations into that matter were concluded as unsubstantiated. Since the Government had provided no discovery regarding that claim, I requested such records from the Government and, in my defense opposition papers, asked that the Court hold a decision on this issue in abeyance. (ECF Doc No. 54 at 6). On October 31, 2023, the Government disclosed certain Office of Special Investigation ("OSI") summary reports of that investigation finding the allegations as "unsubstantiated" citing the investigative steps taken such as phone searches, inmate interviews and other steps. The Government has refused my request for them to provide the OSI investigative file underlying OSI's conclusion, which is necessary to determine whether or not to oppose the Government's preclusion application. There may very well be bad acts or conduct of CO-1 contained therein which were unrelated to OSI's determination, and which would be proper material for impeachment on cross. This is especially true given CO-1's recent arrest and criminal prosecution in New York County.

Indeed, in their reply memorandum (ECF Doc No. 56), they disclose that CO-1 "ha[d] been named in a criminal complaint filed October 20, 2023 in New York County, which charges CO-1 with five misdemeanor offenses." (Id. at 10). They seek to preclude the defendant from

cross examining CO-1 on that matter as well because they constitute "unproven charges". (Id. at 10).

Finally, while the Government now withdraws its motion to introduce purported September 16, 2020 statements made by the inmate Victim to law enforcement, "they reserve the right" to seek introduction of a purported similar statement by made him to law enforcement on June 4, 2020. (Id. at 2).

I therefore write to the Court for leave to file a supplementary defense response to the Government's Motions in Limine as to CO-1. The Government has no objection to a defense response to their request to preclude my cross examination of CO-1's criminal case. The Government will not release the OSI investigative file and objects to any further response to their motion to preclude my cross examination of CO-1 for her "unsubstantiated" charges of misconduct with inmates. Finally, if the Court permits the Government to "reserve the right" to offer a purported June 4, 2020 victim statement, which was not sought in their original motion, as a substitute for the statement they withdrew, I request the opportunity to respond. The Government has no objection.

Should this application to submit a supplemental response be granted, I ask for no later than Monday, November 13, 2023 in which to file. Thank you, Your Honor for your consideration of this matter.

Very truly yours,

Tanner & Ortega, L.L.P.



Howard E. Tanner

cc: AUSA Mitzi Steiner (By ECF and Email/PDF)
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